IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5869 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI
and
Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DIRECTOR

Versus

H.T. TRIPATHI

Appearance:

1. Special Civil Application No. 5869 of 2001
MR BN DOCTOR for Petitioner No. 1-2
MR PH PATHAK for Respondent No. 1-2

CORAM : MR.JUSTICE R.K.ABICHANDANI
and
MR.JUSTICE KUNDAN SINGH

Date of decision: 07/10/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE KUNDAN SINGH)

#. By means of this petition, the petitioners have sought for quashing and setting aside the order dated 28th February, 2001, passed by the Central Administrative Tribunal, Ahmedabad Bench, in O.A. No. 121 of 2000 and for quashing and setting aside the orders dated 27th February, 1998 and 10th February, 2000, changing the date of promotion of the applicants, respondents herein and ordering recovery of the amount already paid to them.

#. On account of the stagnation of employees on the same post having no chance of promotion to any higher post, Time Bound One Promotion (TBOP) Scheme was granted for promotion/upgradation to the Post & Telegraph employees vide communication dated 17.12.83 with effect from 30th November, 1983. This Scheme provides that the eligible official belonging to basic Grades in Group "C" or Group "D" of the Department, who had completed 16 years of service in that grade to be placed in the next higher grade. By the TBOP Scheme, the Competent Authorities are required to identify the officials belonging to the cadres covered under the Scheme, who were to complete 16 years of service upto 31st March of the next year and the Departmental Promotion Committee would be convened before 30th June to consider the fitness of the officials completing 16 years of service in that grade during the year. The employees who complete 16 years of service on the date later than that of convening of the meeting of the Departmental Promotion Committee, will be placed on the approved list and will be promoted to the next higher scale of pay immediately on completion of 16 years of service. After introduction of TBOP Scheme, the staff Union demanded a Second Time Bound Promotion and that was also on completion of 26 years of service in the basic grade. That was not acceptable in terms of the proposal to the Respondent No. 1. However, the Government accepted the need of BCR Scheme under which the employees were granted benefit of the Scheme on completion of 26 years of service. This Scheme was granted to provide promotional opportunity to eligible employees on the basis of functional justification with the object to utilise their services comparatively with higher responsibilities and better skills vide communication dated 11.10.91 with effect from 1.10.91.

#. Heard the learned counsel for the parties. The crucial point in the present case is as to whether Biennial Cadre Review Scheme (BCR Scheme) is applicable as soon as 26 years of service of the employee is over or from the date on which the review is held for giving upgraded post to the employee. Contention of the learned

counsel for the petitioners is that there was a demand of the Union that like 16 years' Scheme namely, Time Bound One Promotion Scheme (TBOP Scheme), benefit of BCR Scheme should be given in the same line as 16 years' Scheme provides. As soon as 26 years' service is over, but the demand was not acceptable in view of the provision made in 1st para of the Scheme wherein it is mentioned that after careful consideration, it has been decided that this concept is not acceptable for implementation of the BCR Scheme. Rules have been framed and that Scheme has been made applicable from 31st December, 1991 and the benefits are given to the concerned employees after the review conducted for eligible officials covering the period from 1.1.92 to 31st December, 1993 who have completed 26 years of service or more on the crucial date. The crucial date, according to the learned counsel for the petitioners are, the dates of review, namely 1.7.92, 1.1.93 and 1.7.93. By that review, post will be created and the benefits of the Scheme will be given from the date of the review as the post has to be identified on functional justification.

#. We have considered the contentions of the learned counsel for the petitioners carefully. The Tribunal found that it is the intention of the government to provide benefit of promotion under BCR Scheme with effect from the date the employee completes 26 years of service, provided he is otherwise found fit and the crucial date as prescribed in para-8 of the aforesaid Scheme is the only date on which the department is required to review the cases of such employees who would be completing or have completed 26 years of service on the crucial dates. The Tribunal has also found that if the contention of the petitioners is considered to be genuine, then it would amount to discrimination against the employees themselves as each one of them would be completing 26 years of service on different dates which would not be the intention of the Scheme. We have also found the intention in para 2 of the BCR Scheme relevant part of which is reproduced as under.

> "However, with a view to providing relief to the employees, the Government have accepted the need for Biennial Cadre Review i.e. (once in two years) under which the incumbents of existing posts would be enabled to draw pay in higher scales on completion of 26 years of service, not only for providing promotional opportunities for the staff concerned but also on the basis of functional justification..."

BCR Scheme does not provide the exact date from which the employees would be entitled for benefit either from the date on which they complete 16 years of service or from the date on which the review is held. One view has already been taken by the Tribunal and that view does not appear to be patently illegal or irrational to this Court. Hence, this Court does not think it proper to exercise its extraordinary discretionary jurisdiction under Article 226 of the Constitution. After going through the material on record and the submissions of the learned counsel for the parties, we find that the Tribunal has not committed any error and as such, we do not find any good reason for interference with the impugned order. Accordingly, the petition is dismissed. Rule is discharged with no order as to costs.

[R.K. ABICHANDANI, J.]

[KUNDAN SINGH, J.]

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